



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,017	05/12/1999	HOLGER LAUSCH	F-6201	5604

7590                    04/23/2002

JORDAN AND HAMBURG  
122 EAST 42ND STREET  
NEW YORK, NY 10168

[REDACTED] EXAMINER

LASTRA, DANIEL

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/308,017	LAUSCH, HOLGER	
	<b>Examiner</b>	<b>Art Unit</b>	
	DANIEL LASTRA	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 December 2001.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>9</u> | 6) <input type="checkbox"/> Other: _____                                    |

1. Claims 1-29 have been examined.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, and 12-16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sizer et al (U.S. 5,923,252) in view of Frey (U.S. 5,138,638).

As per claim 1, Sizer et al teach:

A method for detecting customer behavior due to one of projected visual and projected audiovisual messages and for detecting a range of action of the projected messages (see column 7, lines 18-32):

"in that the messages are presented to the potential customers one of visually and audiovisually" (see abstract), and

Sizer et al fail to teach, "wherein in a detection range a number of potential customers is detected in direct sequence". However, Frey teaches a system that counts all potential customers in a retail store, generates information about in and out shopper flow, and integrates this data with the store's point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). The system allows for "controlled tests to be conducted in paired media markets to accurately measure the increased traffic created

by individual ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertising or special events delivered increased shopper units, and whether such increase in shopper units resulted in expected increased sales" (see column 3, lines 43-53). The data generated from the Frey invention, together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions. Frey's system may be used to measure the impact of competitor's advertising on a store's performance, and the data from the system may be used in determining the effectiveness of in-store promotions as well as merchandise placement within the store (see column 3, lines 42-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey. Sizer mentions in lines 55-65 of column 1 that "prior art devices attempt to detect the presence of a person and to deliver a message to the person on detection of their presence. The problem with the majority of such devices, however, is that they do not operate to discriminate between people detected by the device. The message will be delivered whether or not the person has indicated any particular interest in the message or whether or not the person would be likely to be interested in the message". The Sizer invention provides a message delivery device that detects the presence of a person and delivers a message if the person shows interest and also uses demographics to target messages (see column 6, lines 11-15). Therefore, it would have been obvious to a person of ordinary skill in the

art at the time the application was made, to know that Sizer would be an improvement to the old method of delivering advertising. Sizer may deliver advertisements whether or not the consumer has indicated any interest and the data generated from the Frey invention together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions.

Sizer et al fail to teach, "a number of actual buyers of bought products is detected and the detected numbers of the potential customers, the actual buyers and of the bought products are recorded and correlated." However, Frey teaches a system that detects the number of actual buyers and what products they have bought, to help store managers identify problem areas and take corrective measures to improve store performance (see column 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would integrate its audiovisual marketing device to the store point of sale system, as taught by Frey. Knowing what customers buy would help the Sizer et al system to better target its advertisements.

As per claim 2, Sizer et al teach:

A method as claim 1, "wherein the detected numbers of at least two detection ranges are centrally registered and evaluated" (see column 7, lines 1-15).

As per claim 3, Sizer et al teach:

A method as claimed in claim 2, "wherein the mode of presenting the messages is centrally controlled" (see column 7, lines 1-15).

As per claim 4, Sizer et al teach:

An arrangement for detecting customers behavior due to one of projected visual and projected audiovisual messages and for detecting the range of action of the projected messages:

"wherein sensors are provided being associated to at least one range for detecting movements of the customers in said range" (see column 3, lines 17-19);

"a display is provided for presenting messages in said range"

"a cash box for is provided detecting bought products" and,

"a computer is provided for recording and evaluating the signals of the movements and the counting signals and for controlling said display"

Sizer et al fail to teach, "at least a first sensor is provided at an entry of said range for detecting in direct sequence first counting signals and at least a second sensor is provided at an exit of said range for detecting second counting signals". However, Frey teaches a system that "generates highly reliable count information of in and out shopper flow" and where the "optics module device may be mounted overhead such as above the doorway where the customers enter and leave the store" (see column 3, lines 14-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to determine the effectiveness of advertisement messages, as taught by Frey. The Sizer invention would target and display advertisement to customers that show interest in products and Frey would display advertisements to all customers that enter the retail store. Therefore, the combination of Frey and Sizer would ensure that all customers that

enter the store would be exposed to some kind of advertisements and it would target the advertisement when the system determines that a customer may be interested in a particular product.

As per claim 5, Sizer et al teach:

An arrangement according to claim 4,

"wherein two ranges connected with one another via a passage, at which at least a third sensor is provided, wherein the display is arranged in said first range and the products in said second range" (see column 5, lines 20-24).

As per claim 6, Sizer et al fail to teach:

An arrangement according to claims 4 or 5,

"wherein said second sensor at the exist is coupled to an electronic cash register." However, Frey teaches sensors at the store exit that detect the presence of potential buyers and which are coupled to an electronic cash register (see columns 3 and 4). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al sensor system would integrate this feature with the point of sale system, as taught by Frey. Integrating the sensors that detect the number of potential buyers with the point of sale system would help the Sizer et al system to better target the advertisements. It is more important for the Sizer system to know the number of shopper units in a store, as opposed to the number of people in the store. The parent and children as a group would constitute a single shopper unit because young children themselves would not be expected to make purchase. Connecting the sensors to cash register would be used in the Sizer invention

to evaluate the store performance based, in part, on the conversion of actual customers to shopper units, as taught by Frey.

As per claim 7, Sizer et al teach:

An arrangement according to claim 6,

"wherein said computer includes an image storage for the display" (see column 7, lines 1-17).

As per claim 8, Sizer et al teach:

An arrangement according to claim 7, wherein said computer is in combination with computers of further arrangements to a central detection and evaluation unit" (see column 7, lines 1-17).

As per claim 10, Sizer et al fail to teach:

An arrangement according to claims 4 or 9, wherein the display is arranged in upright position". However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it. If the best position is upright, the Sizer et al's display would be oriented to that position.

As per claims 12 and 15, Sizer et al fail to teach:

An arrangement according to claim 10, wherein the display is arranged inclinedly." However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it. If the best position is inclined, the Sizer et al's display would be oriented to that position.

As per claims 13 and 16, Sizer et al fail to teach:

An arrangement according to claim 10, wherein a plurality of displays are arranged in suitable manner." However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it.

As per claim 14, Sizer et al teach:

An arrangement according to claim 4, wherein the same is cross-linked with at least a further same arrangement via a central station" (see column 7).

Claim 18 contains the same limitation as claim 1, therefore the same rejection is applied.

As per claim 19, Sizer et al teach:

A method for detecting customer behavior according to claim 18, wherein the message is one of a visual message and an audiovisual message (see abstract).

As per claim 20, Sizer et al fail to teach:

A method for detecting customer behavior according to claim 18, wherein a message is only projected to potential customers if the number of potential customers detected in direct sequence by the first sensor exceeds the number of potential customers that exit as detected by the second sensor. However, Frey teaches a system that, "generates highly reliable count information of in and out shopper flow" and where the "optics module device may be mounted overhead such as above the doorway where the customers enter and leave the store. From data generated from the system together with data from other store systems including the POS system, advertising and special

event effectiveness may be evaluated" (see column 3, lines 14-21). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to determine the effectiveness of advertisement messages, as taught by Frey. The Sizer invention would use the in and out sensors taught by Frey to determine the presence of potential customers, and to better deliver advertisements.

As per claim 21, Sizer et al teach:

A method for detecting customer behavior according to claim 18, wherein the step of recording and correlating data is via a worldwide link (see figure 5).

Claims 9, 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sizer et al (U.S. 5,923,252) in view of Frey (U.S. 5,138,638) and further in view of Fraser (U.S. 5,620,061).

As per claim 9, Sizer et al fail to teach:

An arrangement according to claim 4, wherein a fiber-optical display is employed." However, Fraser teaches of the delivery of advertisements using a fiber optical display (see column 4, lines 1-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would utilize fiber optical displays, as taught by Fraser. Utilizing fiber optical displays would allow the Sizer et al system to deliver high bandwidth data, such as videos.

As per claims 11 and 17, Sizer et al fail to teach:

An arrangement according to claim 4 or 9, wherein the display is arranged suspended in suitable manner." However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer et al system would arrange the display in the best position for the customer to see it.

Claims 22-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey (U.S. 5,138,638) in view of Sizer et al (U.S. 5,923,252).

As per claim 22, Frey teaches:

An apparatus for detecting consumer behavior comprising:

a first sensor for detecting in direct sequence a number of potential customers (see column 3) ;

a second sensor for detecting the number of potential customers that exit (see column 3, lines 14-20);

a register for determining actual customers of said potential customers who purchased at least one product presented in said message (see column 3, lines 43-53);

a computer for recording and evaluating the number of potential customers and the number of actual customers and for controlling said unit (see column 3, lines 43-66);

Frey describes that "controlled tests can be conducted in paired media markets to accurately measure the increase traffic created by individuals ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertisement delivered increase shopper units, and whether such increase in shopper units resulted in the expected increased sales" (see column 3, lines 42-53).

Frey does not mention a unit for presenting messages, however Sizer et al teach in

lines 55-64 of column 1, of units that detect the presence of a person and that deliver messages to the person on detection of their presence. The message is delivered whether or not the person has indicated any particular interest in the message. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the units described in Sizer to deliver messages to customers and to determine the success of a marketing campaign. As long as Frey matches the displayed advertisements with the increase traffic sale, it would not matter if the advertisements are shown on TV, in a store, or in another location.

As per claim 23, Frey fails to teach:

An apparatus for detecting consumer behavior according to claim 22, wherein the computer controls the unit so that a message is only presented when the number of potential customers detected with the first sensor exceeds the number of potential customers that exit detected with the second sensor. But, the Frey invention, in lines 14-16 of column 3, teaches a system with multiple optic modules to insure that all shoppers entering and leaving the store are detected. Frey also fails to teach the delivery of a message when a potential customer is detected. However, Seizer teaches a system that delivers messages when a potential customer is detected (see column 2, lines 30-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the Seizer invention to display advertisement to customers; but would only display advertisements when it detects the presence of a person. Frey would use the in and out sensors to determine if

there are still customers in the store and would use the Seizer system to target advertisements. There would be no use in displaying a message when there is no one there to see it.

As per claim 24, Frey fails to teach, an apparatus for detecting consumer behavior according to claim 22, wherein the message is one of a visual message and an audiovisual message. However, Seizer teaches a system that delivers audio and visual messages upon detecting the presence of a person (see column 2, lines 30-67 and column 4, lines 10-17). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey, upon detecting the presence of a potential customer, would deliver advertisements to that customer, as taught by Seizer. Adding the Seizer message delivery device to Frey would help it to better target advertisements and to better determine whether the advertisement or special event message delivered have increased the shoppers units, and whether such increase in shopper units resulted in the expected increased sales.

As per claim 25, Frey teaches:

An apparatus for detecting consumer behavior according to claim 22, further comprising a central control unit for controlling said computer (see column 3, lines 27-33).

As per claim 26, Frey fails to teach an apparatus for detecting consumer behavior according to claim 22, wherein said unit is suspended at an angle. However, Seizer teaches a system that delivers audio and visual messages upon detecting the presence of a person (see column 2, lines 30-67 and column 4, lines 10-17). Seizer

does not mention that the display is suspended at an angle. However, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the Sizer system would arrange the display in the best position for the customer to see it, be it suspended at an angle or otherwise.

As per claim 28, Frey fails to teach,

An apparatus for detecting consumer behavior according to claim 22, wherein said unit is a plurality of units. Seizer teaches a plurality of units that upon detecting the presence of a person deliver audio and visual messages (see column 2, lines 30-67 and column 4, lines 10-17 and column 5, lines 20-24). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would deliver advertisement to a potential customer upon detecting the presence of that customer, as taught by Seizer. Adding the Seizer message delivery device to Frey would help it to better target advertisements and to better determine whether the advertisement or special event message delivered have increased the shoppers units, and whether such increase in shopper units resulted in the expected increased sales.

As per claim 29, Frey teaches:

An apparatus for detecting consumer behavior according to claim 22, further comprising a third sensor for detecting removal of a product (see column 3, lines 10-32).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frey (U.S. 5,138,638) in view of Sizer et al (U.S. 5,923,252) and further in view of Fraser (U.S. 5,620,061).

As per claim 27, Frey fails to teach an apparatus for detecting consumer behavior according to claim 22, wherein said unit is a fiber optic display. However, Fraser teaches of the delivery of advertisements using a fiber optical display (see column 4, lines 1-8). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use fiber optical displays to deliver advertisement, as taught by Fraser. The Frey invention would determine whether the advertisements or special event messages delivered have increased the shopper units, and whether such increase in shopper units resulted in the expected increased sales (see column 3, lines 42-53). The Fiber optical displays would show the advertisement and the Frey invention would analyze the effect on the customers.

***Conclusion***

3. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The Applicant argues that a different sensor configuration and method of detection are used between the presently claimed invention and the configuration of Sizer et al. The Applicant also argues that the device of Sizer et al counts the persons who directly pass by a particular product disinterestedly and those who respond and relates these two numbers. The Applicant further argues that Sizer does not detect in direct sequence all potential customers that pass a first sensor. And, the Applicant argues that in his present application all persons in a determination area are counted and messages are sent. The extent to which the advertising messages are received by the customers and the extent to which the interest in a product or products has been aroused is determined in the determination area, according to the Applicant.

The Examiner answers that Frey teaches a system that counts all potential customers in a retail store, generates information about in and out shopper flow, and integrates this data with the store's point of sale system (see column 1, lines 9-23 and column 3, lines 10-67). The system allows for "controlled tests to be conducted in paired media markets to accurately measure the increased traffic created by individual ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertising or special events delivered increased shopper units, and whether such increase in shopper units resulted in expected increased sales" (see column 3, lines 43-53). The data generated from the Frey invention, together with the data from the point of sale system would be used to evaluate the effectiveness of

advertisements and promotions. Frey's system may be used to measure the impact of competitor's advertising on a store's performance, and the data from the system may be used in determining the effectiveness of in-store promotions as well as merchandise placement within the store (see column 3, lines 42-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would also count the in and out shopper flow and would integrate this data with the POS system to analyze the impact of advertisements messages, as taught by Frey. Sizer mentions in lines 55-65 of column 1 that "prior art devices attempt to detect the presence of a person and to deliver a message to the person on detection of their presence. The problem with the majority of such devices, however, is that they do not operate to discriminate between people detected by the device. The message will be delivered whether or not the person has indicated any particular interest in the message or whether or not the person would be likely to be interested in the message". The Sizer invention provides a message delivery device that detects the presence of a person and delivers a message if the person shows interest and also uses demographics to target messages (see column 6, lines 11-15). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sizer would be an improvement to the old method of delivering advertising. Sizer may deliver advertisements whether or not the consumer has indicated any interest, and the data generated from the Frey invention together with the data from the point of sale system would be used to evaluate the effectiveness of advertisements and promotions.

The Applicant argues that in Sizer the reference point is the product and in the present application, the reference point is the display system.

The Examiner answers that **In re Hiniker Co.**, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) the court ruled: "The name of the game is the claim. Although operational characteristics of a product may be apparent from the specification, we will not read such characteristics into the claims when they cannot be fairly connected to the structure recited in the claims. See **In re Self**, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982). When given their broadest reasonable interpretation, the claims on examination sweep in the prior art, and the prior art, which is Sizer, would have directed an artisan of ordinary skill to make the rejection cited by the Examiner. The Sizer invention relates to a device for delivering audio and/or visual messages for marketing purposes such as activating a television monitor or a computer display to deliver advertisements (see column 4, lines 15-20). In the present application, the Applicant is claiming the detection of customer behavior due to the delivery of advertisement messages. The display in the application is used to display advertisements but the display per se is not claimed. Therefore, Seizer sweeps in the claimed invention.

Moreover, the Applicant argues that in the present application, the display system need not be necessarily disposed in the vicinity of the product. According to the Applicant, this is indicated by the presence of a determination space and a sales space. The Applicant further argues that in Sizer, the product and the display must be in the immediate vicinity of one another. The Applicant also argues that the cited art fails to

teach an arrangement where a display is in a first range and a product is in a second range.

The Examiner answers that Frey describes that "controlled tests can be conducted in paired media markets to accurately measure the increase traffic created by individuals ads, multimedia campaigns, sales events or specific promotions. For example, it can be determined whether the advertisement delivered increase shopper units, and whether such increase in shopper units resulted in the expected increased sales" (see column 3, lines 42-53). Although Frey does not mention a unit for presenting message, Sizer et al in lines 55-64 of column 1, teaches of units that detect the presence of a person and that deliver messages to the person on detection of their presence. The message is delivered whether or not the person has indicated any particular interest in the message. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Frey would use the units described in Sizer to deliver messages to customers and to determine the success of a marketing campaign. As long as Frey matches the display advertisements with the increase traffic sale, it would not matter if the advertisements are shown on TV, in a store, or in another location.

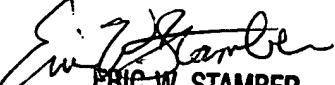
The Applicant argues that Sizer is not suitable for utilizing the reception of messages for the analysis and for the determination and scope of customer behavior. The Applicant further argues that Sizer et al are interested with information from interested persons while the present application is intended to arouse a buying interest.

The Examiner answers that Sizer invention indeed is intended to arouse a buying interest as a message is sent to a person that shows interest in a product. The Sizer invention delivers the message at the moment in time within the consumer decision making process where it is most likely to generate the maximum number of sales. Sizer believes that the impact can be increased by first establishing what person or persons are likely to be interested in a particular product and then by delivering a message to that person in audio and/or visual form (see column 1, lines 15-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that the purpose of the Sizer invention is to increase the effectiveness of the advertisement in arousing a buying interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

  
ERIC W. STAMBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100